

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
E [REDACTED] E [REDACTED], I/B/M/N/G, KIM JAIME
& KIM JAIME, Individually,

Plaintiffs,

-against-

THE CITY OF NEW YORK and THE POLICE
DEPARTMENT OF THE CITY OF NEW YORK,
P.O. DAMEN FORD, SHIELD NO: 10308 and
P.O. JEANBERN REMY, SHIELD NO: 12574,

Defendants.
-----X

INDEX NO:

VERIFIED
COMPLAINT

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF
OF INFANT-PLAINTIFF, EDNA ESPINOZA:

1. At the time of the commencement of this action plaintiff, E [REDACTED] E [REDACTED] was and still is a resident of the County of Bronx, City and State of New York.

2. The cause of action herein alleged arose in the State of New York, County of Bronx.

3. That at all times hereinafter mentioned, the defendant, THE CITY OF NEW YORK (hereinafter referred to as "CITY"), was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

4. Upon information and belief, that at all times hereinafter mentioned, the defendant, CITY, its agents, servants,

employees and/or licensees operated, maintained and controlled the POLICE DEPARTMENT OF THE CITY OF NEW YORK, including all the police officers thereof.

5. That a Notice of Claim was filed within 90 days of the occurrence alleged herein.

6. That a 50H Hearing has been held as requested in this matter.

7. That this action is commenced within one year and 90 days after the cause of action arose.

8. That on September 26, 2009 and prior thereto, there existed a building and premises known as and by 976 Leggett Avenue, in the Borough and County of Bronx, City and State of New York.

9. That on September 26, 2009 and at all times herein mentioned, Plaintiff, [REDACTED] was lawfully in front of said premises.

10. That on September 26, 2009 and at all times herein mentioned, the defendants, their agents, servants and/or employees, acting within the scope of their authority and within the scope of their employment, caused the plaintiff herein to be assaulted, accosted and sustain serious injuries.

11. That the aforesaid occurrence and results thereof were due solely and wholly by reason of the negligence, carelessness and recklessness of the defendants, their agents, servants, employees, licensees, designees and/or representatives in the ownership, operation, maintenance, management, supervision, charge and control of the aforesaid location and personnel thereat; in failing to act in a professional, skillful and prudent manner; in failing to adhere to commonly accepted standards, guidelines and/or practices in connection with investigating a matter and in dealing with and/or questioning individuals; in causing, permitting and allowing the plaintiff to sustain injuries; in failing to adhere to commonly accepted guidelines, standards and/or practices as concerns hiring techniques; in failing to properly and adequately monitor, instruct, oversee, supervise, train and/or proctor their personnel, in using excessive force and intimidation; in failing to act in a professional and prudent manner; in causing, allowing and permitting a situation to escalate as opposed to quelling same, and in demonstrating indifference and willful disregard as to the safety and well-being of others.

12. That by reason of the aforesaid, the plaintiff was injured in mind and body, still suffers, and will continue to suffer, great physical and mental pain and anguish; was prevented

from performing and transacting her necessary affairs and business; the plaintiff will continue to be so incapacitated in the future, and has expended diverse sums of monies, and incurred debt, in an effort to cure herself of said injuries.

13. That by reason of the aforesaid, the plaintiff has been damaged in a sum which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF
OF PLAINTIFF, [REDACTED]:**

14. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs marked "1" through "13" inclusive, with the same force and effect as if more fully and completely set forth at length herein.

15. That on or about the 26th day of September, 2009, at approximately 3:30 P.M. of that day, the infant-plaintiff was lawfully and properly in front of, at/or near 976 Leggett Avenue, Bronx, New York at which time and place defendants then and there were at as part of their regular and official employment as police officers for the defendant, CITY.

16. As the infant-plaintiff was lawfully and properly thereat, said police officers who, having the real and apparent ability to cause imminent harmful and offensive bodily contact and

the power and authority to arrest and imprison the infant-plaintiff did so threaten these acts upon the infant-plaintiff, who after continuing her lawful activity, was violently struck by the defendants, and/or unprotected from the striking.

17. Immediately thereafter, aforementioned defendants, their agents, servants, employees and/or licensees falsely arrested and imprisoned the infant-plaintiff, severely assaulted and battered the infant-plaintiff and deprived her of her rights and liberties as set forth in the Constitutions of the United States and of the State of New York, handcuffed to, and threatened the infant-plaintiff with the possible use of firearms and weapons and the use of physical force; in that they continued to assault and batter the infant-plaintiff and to imprison her without any conduct on the part of the infant-plaintiff to so warrant to wit:

a) in that all of the actions of the defendants, their agents, servants and employees, were committed with the intention to cause bodily and mental injury to the infant-plaintiff, to arrest, restrain and imprison the infant-plaintiff without her consent, the infant-plaintiff was at all times conscious of her arrest, did not consent to the false arrest and imprisonment were not otherwise privileged; and,

b) the arrest and imprisonment were not justified by probable cause of other legal privilege; defendants, their agents, servants and employees, acting under the color of statute, ordinances, regulations, customs and usages of the State, City and County of New York, and under the authority of their office as police officers for said City, falsely charged the plaintiff the following sections of the Penal Law although the defendants, acting in such capacity, knew that such charges were false:

c) that the defendants, their agents, servants, employees and/or licensees caused an assault and battery when they in a hostile and/or offensive manner threatened, touched and beat the infant-plaintiff without her consent and with the intention of causing harmful and/or offensive bodily contact to the infant-plaintiff, all without warrant, probable cause or any lawful cause whatever; and,

d) that the defendants, their agents, servants, employees failed to adequately and properly hire, retain, train, supervise, discipline or in any other way control the behavior and performance of the defendants, their agents, servants and employees; that in their hiring practices in the exercise of their police functions and their failure to enforce the laws of the State and City of New York is evidence of the reckless lack of cautious regard for the

rights of the public including the infant-plaintiff; in that they exhibited a lack of that degree of due care which prudent and reasonable individuals would show in executing the duties of the defendants; and,

e) the failure of the defendants, their agents, servants and employees to hire, train, supervise, discipline or in any other way control the defendants, in the exercise of their functions; in that their failure to enforce the laws of the State of New York and the City of New York was and is carried out willfully, wantonly, maliciously and with such reckless disregard for the consequences so as to display a conscious disregard for the dangers of harm and injury to the citizens of the State and City of New York including the infant-plaintiff; and,

f) due to the acts of the defendants, their agents, servants and employees herein the failure of the City of New York to discipline and properly hire the defendants and the continued employment of the defendants presents a clear and present danger to the citizens of the City and State of New York; and,

g) that the said prosecution and criminal charges and hearings were instituted and procured by the defendants, their agents, servants and employees in this action unlawfully and maliciously and without any reasonable or probable cause whatsoever

therefor. That the commencement and/or continuation of the criminal proceedings by the defendants against the infant-plaintiff was without probable cause with actual malice and was terminated in favor of the infant-plaintiff; and,

h) that the defendants, their agents, servants and employees permitted the use of policy and/or drafted policy that was violative of the Constitutional rights of the above named infant-plaintiff; and, in that each and all of the acts of the defendants, their agents, servants and employees alleged herein were done not as individuals but under the color and pretense of the Statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of New York, and under the authority of their office as police officers for said City and county.

18. Defendants did not have probable cause to pursue or arrest and search [REDACTED] either before or at the time and deprived her of her Constitutional rights as set forth in the Constitution of the United States, particularly 42 U.S.C. Sec. 1983 and the Constitution of the State of New York.

19. As a direct result of the illegal actions and conduct on the part of the defendants, their agents, servants and employees the infant-plaintiff was falsely arrested and imprisoned,

assaulted and battered, maliciously prosecuted and compelled to be arraigned and appear in Criminal Court in the City of New York, County of Bronx and to undergo a criminal proceeding in Court.

20. That at all times hereinafter mentioned, the defendants were employed in their respective capacities by the defendant, CITY, and were acting under the color of their official capacity and their acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

21. That at all times hereinafter mentioned, the police officers were acting pursuant to orders and directives from defendant, CITY.

22. That during all times hereinafter mentioned, the police officers and each of them, separately, and in concert, acted under color and pretense of law, to wit: under color of the statutes, ordinances, regulations, customs and usages of the City of New York and the defendants here, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of the infant-plaintiff, E [REDACTED] E [REDACTED], and deprived infant-plaintiff of the rights, privileges and immunities secured to infant-plaintiff by the First and Fourteenth Amendments to the Constitution of the United States and the laws of the United States.

23. The police officers of the defendant, CITY, and its individual members who are agents, servants and employees of defendants, together with persons unknown to infant-plaintiff, acting under color of law, have subjected the infant-plaintiff and other persons to a pattern of conduct consisting of illegal harassment, assault and battery, false imprisonments and arrests and malicious prosecution at the time said persons are lawfully and properly on the public streets/highways/thoroughfares partaking in peaceful demonstrations in the Borough and County of Bronx, City and State of New York, in denial of rights, privileges and immunities guaranteed infant-plaintiff, E [REDACTED] E [REDACTED], and other citizens by the Constitution of the United States.

24. This systematic pattern of conduct consists of a large number of individual acts of violence, intimidation, false arrest and false imprisonment and malicious prosecution visited on infant-plaintiff and other citizens by members of the police department of defendant, CITY, acting in concert with persons unknown to the infant-plaintiff and under color of law and said acts, while carried out under color of law, have no justification or excuse in law and are instead illegal, improper and unrelated to any activity in which police officers may appropriately and legally engage in

the course of protecting persons or property or ensuring civil order.

25. Although defendants knew or should have known of the fact that this pattern of conduct was carried out by their agents, servants and employees, the defendant, CITY, has not taken any steps or made any efforts to halt this course of conduct, to make redress to the infant-plaintiff or other citizens injured thereby, or to take any disciplinary action whatever against any of their employees or agents.

26. The unlawful and illegal conduct of the defendants, their agents, servants and employees and each of them, deprived infant-plaintiff of the following rights, privileges and immunities secured to her by the Constitution of the United States and of the State of New York:

a) The right of infant-plaintiff to be secure in her person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States; and,

b) The right of infant-plaintiff to be informed of the nature and cause of the accusation against her as secured to her under the Sixth and Fourteenth Amendments to the Constitution of the United States; and,

c) The right of infant-plaintiff not to be deprived of life, liberty or property without due process of law, and the right to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

27. That by reason of the aforesaid violations, false arrest and false imprisonment, assault and battery and malicious prosecution caused by the defendants, their agents, servants and employees who conspired together to enter into a nefarious scheme to wrongfully deprive the infant-plaintiff and compel her to abandon her rights and privileges as provided to her in the Constitution of the United States of America, and provided to her in the Constitution of the State of New York, and laws thereto, the defendants, their agents, servants and employees violated U.S.C. Sec. 1983 in that the defendants, their agents, servants and employees acted as persons who under color of any statute ordinances, regulation, custom or usage of the City of New York, subjected or caused to be subjected, a citizen of the United States or other persons within the jurisdiction, particularly the infant-plaintiff, [REDACTED], thereof to be deprived of her rights, privileges or immunities received by the Constitution and laws of the United States of America and of the State of new York; was subjected to great indignities and humiliation, and pain and distress of mind and body and was held up to scorn and ridicule, injured in her character and reputation, was prevented from attending her usual business and vocation and was injured in her reputation in the community and the acts aforementioned were

committed with the aim of injuring and damaging the infant-plaintiff.

28. That by reason of the aforesaid intentional assault and battery, the false arrest and false imprisonment, malicious prosecution and deprivation of her rights and liberties as guaranteed by the aforementioned Constitutions, by the defendants, their agents, servants and employees, acting within the scope of their authority, and without any probable or reasonable cause, the infant-plaintiff suffered great bodily injury in and about her head neck, back, body and limbs and was rendered sick, sore, lame and disabled, and among other things, she suffered conscious pain and suffering, and that she was otherwise damaged.

**AS AND FOR A CAUSE OF ACTION ON BEHALF
OF PLAINTIFF, KIM JAIME:**

29. That plaintiff, KIM JAIME, repeats, reiterates and realleges each and every allegation contained in the Complaint in Paragraphs designated "1" through "28" inclusive, as if more fully and completely set forth herein at length.

30. That at all times herein mentioned, KIM JAIME, was and is the mother and natural guardian of the injured plaintiff, [REDACTED] and as such was and is deprived of the society, services, companionship and well-being of her daughter,

[REDACTED]

31. That by reason of the foregoing, plaintiff, KIM JAIME, was damaged in a sum which exceeds the jurisdictional limits of all lower Courts which would otherwise have jurisdiction.

WHEREFORE, plaintiffs demands judgment against the defendants in an amount which exceeds the jurisdictional limits of all lower Courts, together with the costs and disbursements of each cause of action.

Dated: Bronx, New York
August 24, 2010

Yours, etc.,


HOWARD I. GETZ

GETZ & BRAVERMAN, P.C.

Attorneys for Plaintiffs

E [REDACTED] E [REDACTED] & KIM JAIME

172 East 161st Street

Bronx, New York 10451

(718) 993-3000

PLAINTIFF'S VERIFICATION

STATE OF NEW YORK)

SS:

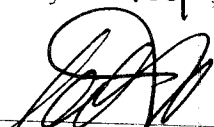
COUNTY OF BRONX)

Kim Jaime, being duly sworn, deposes and says:

I am the PLAINTIFF in the within action. I have read the foregoing *Summons & Complaint* and know the contents thereof and the same is true to my own knowledge, except as to those matters stated upon information and belief and as to the matters I believe them to be true.

Sworn before me this

25th day of *Aug.*, *2010*


NOTARY PUBLIC

✓ Kim Jaime
Kim Jaime

HOWARD I GETZ
NOTARY PUBLIC
CITY OF NEW YORK 02GE6115513
CERTIFICATE FILED IN BRONX COUNTY
COMMISSION EXPIRES 09/07/20 *12*